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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 19-07-2007

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE MR.JUSTICE S.PALANIVELU

WRIT APPEAL No.77 OF 2004

The Management of Indian Airlines Limited,
"Airlines House",
Chennai-600 027. ... Appellant/2nd Respondent

-vs-

1.S.M.K.Khan ... Respondent/Petitioner
2.The Presiding Officer,
Central Government Industrial Tribunal,
Shastri Bhavan,
Chennai. ... Respondent/1st Respondent

Appeal against the order, dated 13.11.2003, made in W.P.No.23617 of 2001, on the file of this Court to issue a writ of certiorarified mandamus calling for the records of the 1st respondent in Connection with the award dated 14th September 2001 passed in I.D No.60 of 2000 and quash the same and consequently direct the 2nd respondent to reinstate the petitioner in service with full backwages and all consequent and attendant benefits.

For appellant : Mr.N.G.R.Prasad

For respondent 1 : Mr.V.Prakash,
Senior Counnsel.

J U D G M E N T

S.PALANIVELU,J.

This Writ Appeal is filed by the appellant management, aggrieved over the allowing of the Writ Petition, filed by the first respondent workman, challenging the order of compulsory retirement passed against him.

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2. The factual matrix of the case is as follows :

2.1. First respondent joined the service under the appellant management as a Security Guard on 12.09.1966. When he was to attain the age of 55 years, his case came up for review before the Regional Director (South). The said superior officer issued a Memo, dated 11.05.1998, to first respondent, stating that his retention in service beyond the age of 55 years required a perusal of his past records and on examination of the previous service particulars, he proposed to retire the first respondent from the service of Indian Airlines Limited, in terms and Service Regulation 12, with effect from 10.08.1998 (close of work).

2.2. The grounds adduced in the memo are, despite various warnings and punishments, the incumbent had not shown any improvement and his attendance records for the period from 1994 to 1997 were far from satisfactory and, hence, it was felt that no useful purpose would be served by continuing his services in the company beyond the age of 55 years. He was also called upon to make his submissions as to the proposed retirement.

2.3. Thereupon, on 18th May,1998, first respondent submitted an explanation to the above said officer, stating that since he had to incur loans for his elder daughter's marriage and to settle his elder son, his service, beyond the age of 55 years, might be considered by the management and that he would work to the fullest satisfaction of his superiors.

2.4. In response to the said letter, on 15.07.1998, the Regional Director (South) sent a letter to first respondent, mentioning that the explanation submitted by first respondent would not make any ground for reconsideration of the decision taken by the management and, hence, his services came to a halt and he would stand retired at the close of work on 10.08.1998

2.5. Then, the first respondent met the above said brass of management and personally represented his family circumstances, requesting to allow him to continue in service.

2.6. Subsequently, the said officer passed an order, dated 08.08.1998, under Regulation 12, stating that the personal representation of first respondent was considered and it was decided to afford one more opportunity for him to continue in service for one year beyond the age of 55 years and that his retention in service beyond 10.05.1999 would be subject to the outcome of the review that would be carried out in due course and that his attendance and performance would be closely watched.

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2.7. Thereafter, on 28.12.1998, Manager (Security) issued a letter to first respondent, stating that during the period from June to December,1998, he remained absent for 17 days and that his failure to improve the attendance would entail in reversing the decision of the management.

2.8. On 27.05.1999, Regional Director (South) issued a proceeding under Service Regulation 12, mentioning that in spite of granting sufficient opportunity, first respondent remained absent for 20 days during the extended period of service, showing no improvement in his attendance records. Hence, it was proposed to retire him from service of the management at the close of work on 26.08.1999 and, accordingly, he was directed to make submissions, if any, in writing within seven days.

2.9. On 14.06.1999, first respondent submitted a reply explanation, mentioning that he had to celebrate marriage of his daughter and educate his son, requesting to show mercy on him for continuation in service.

2.10. After perusing the said explanation, on 22.06.1999, the above said officer shot off a letter, stating that even though ample opportunities were given to him, first respondent did not improve his attendance and the performance during the extended period of service and, therefore, it was decided to retire him from service at the close of work on 26.08.1999.

2.11. Then, first respondent raised an industrial dispute, which was referred to Central Government Industrial Tribunal-cum-Labour Court, second respondent herein, for adjudication.

2.12. The Tribunal, considering the materials placed before it, held that the compulsory retirement of first respondent from the service of the appellant was justified.

2.13. As against the said finding, first respondent/workman filed a Writ Petition, which was allowed.

2.14. Hence, this Writ Appeal, at the instance of the management.

3. The contention of the appellant before the Labour Court, the learned single Judge and also this Court is that first respondent was a chronic absentee from the work and he had suffered many penalties at the hands of the management, which were enumerated in the first letter, dated 11.05.1998 and even though he was to be retired compulsorily on attaining the age of 55 years, in order to

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grant one more opportunity, his period was extended by one year and even during the period of extended service, he remained as such, absenting himself from duty for 20 days, rendering his job to be given up by the management.

4. The main stay of the contention of the learned counsel for the appellant is that since the first respondent was unauthorisedly absent for 20 days during the extended period of service, he could not be retained in service any more and that since his performance was not satisfactory, it cannot be contended that no retirement could be considered between the age of 55 and 58 years. Further, the first respondent is estopped by his letter, dated 18.05.1998, to challenge the retirement, and he has not disputed his absence in his letter, dated 14.06.1999, and, therefore, the decision taken by the management, retiring the first respondent, is legally valid.

5. Before going into the merits of rival contentions of the parties, it is profitable to extract Rule 12 of Indian Airlines Employees Service Regulations, which reads as follows :

> 12. An employee shall retire from the service of the Corporation on attaining the age of 58 years provided that the competent authority may ask an employee to retire after he attains the age of 55 years on giving 3 months' notice without assigning any reason. "An employee,
>
> (a) on attaining the age of 55 years; or
>
> (b) on the completion of 25 years of continuous service, may, by giving 3 months notice, voluntarily retire from service.
>
> Provided that the voluntary retirement under clause (b) shall be subject to approval of the competent authority."

6. In the first place, it is to be noted that though after scrutiny of the past records of first respondent with reference to the adverse entries and the penalties imposed on him, the management allowed him to continue in service for one year and it was also directed that his services would be closely observed. So, after allowing him beyond 55 years in service, the adverse entries would no longer be operative for future course of action to be taken by the management, for the purpose of deciding to retire him from service.

7. Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While this Court would not examine the matter as an appellate court, it may interfere if it is satisfied that the order is passed :

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(a) mala fide or
(b) that it is based on no evidence or
(c) that it is arbitrary -

in the sense that no reasonable person would form the requisite opinion on the given material ; in short, if it is found to be a perverse order.

8. In order to appreciate the contentions of both the parties, it has become inevitable to re-apprise the materials on record, which were discussed by the Central Government Industrial Tribunal, to some possible extent, as the above said three features, approved by legal concepts, appear on the face of record.

9. Before the Tribunal, on behalf of the workman, none was projected for examination, whereas, for management, the Personnel Manager was examined as M.W.1, whose oral testimony throws some light on the subject.

10. After the above said communications between the parties, the period between 08.08.1998 and 27.05,1999 was taken into consideration, for reviewing the services of first respondent. It was stated that first respondent remained absent from duty for 20 days

11. At this juncture, it is to be noted that in the impugned order, dated 22.06.1999, which is to the effect of retiring first respondent from service, it is not stated that first respondent was unauthorisedly absent for certain period. However, in the previous letter, dated 27.05,1999, the management pointed out that first respondent remained absent for 20 days.

12. The said aspect receives a scathing attack from the side of workman, contending that the nature of absence from duty was not portrayed therein and, in none of the communications emanated from the management, it was indicated that it was an unauthorised absence.

13. However, in the testimony of M.W.1, he has stated the particulars of absence of first respondent with reference to the dates in the years 1998 and 1999, which are enlisted as follows :

06.07.1998, 10.07.1998, 29.07.1998, 17.08.1998 (½ day), 28.08.1998 (½ day), 25.08.1998, 27.09.1998, 10.10.1998, 11.10.1998, 12.10.1998, 18.10.1998, 02.11.1998, 05.11.1998, 07.11.1998, 21.11.1998, 26.11.1998, 20.12.1998, 30.12.1998, 01.01.1999, 06.01.1999 (½ day), 07.01.1999, 12.01.1999, 13.01.1999, 29.04.1999 (½ day), 01.05.1999, 03.05.1999, 10.05.1999, 15.05.1999 and 19.05.1999, totally 27 days.

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14. In order to show the entries in the muster rolls before the Tribunal, the management produced copies of them. Sifting of the below noted entries, craving for attention, has given rise to the following days of absence of first respondent, which are under the column "Absent without permission" :

July, 1998	:	3 days (extract not found in typed set, but mentioned by M.W.1)
August, 1998	:	3 days
September,1998	:	1 day
October, 1998	:	4 days
November,1998	:	5 days
December,1998	:	11 days
May,1999	:	5 days (extract found in typed set, but not mentioned by M.W.1)
		32 days

15. M.W.1 further stated that first respondent availed 6 days leave from 10.09.1998 to 15.09.1998 on the ground of self-sickness, for which he produced medical certificate. So, as per the management, the said period is not unauthorised.

16. According to M.W.1, before the Tribunal, the period of absence was 27 days. While calculating the days of absence in 1998-1999, even though he stated that unauthorised absence was for 20 days, as per the entries in muster rolls, under the column "Absent without permission", it is calculated at 32 days. It is stated that out of the above said period, 6 days leave, available to the credit of first respondent, would be adjusted.

17. In the muster roll pertaining to September,1998, an entry is available under the column "Absent without permission" for only one day. A further entry is also found under the column "Privilege Leave". Hence, in September,1998, only one day is reported to be a day of unauthorised absence and 32 days of alleged unauthorised absence is exclusive of 6 days of Sick Leave. So, even from the side of management, there are significant variations, as to the alleged period of absence.

18. We are at a loss to understand as to which one is the correct figure. If the statement of M.W.1 and the entries in the muster rolls, which are contradictory to each other, are taken into consideration, in the presence of mentioning of 20 days' absence in the letter, dated 27.05.1999, our definite conclusion in this regard would be that muster rolls are not maintained properly and the entries found therein could not be believed at all. Even though

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M.W.1 was quizzed in cross-examination before the Tribunal with reference to the individuals who made the entries, in order to establish the genuineness of the said entries, nobody was brought to witness box. So, the theory of unauthorised absence for 20 days came to a naught. The notice of retirement, without correct particulars, will not stand for a minute's scrutiny and it would lose its probative value.

19. The next limb of contention of learned Senior Counsel for first respondent is that the principles of natural justice have been violated in the conduct of domestic inquiry.

20. In the letters, dated 27.05.1999 and 22.06.1999, proposing to retire first respondent, it is merely stated that he was unauthorisedly absent for 20 days. Both the letters are bereft of particulars with reference to the dates and month, during which the unauthorised absence occurred. As already stated, a scrutiny of muster rolls shows that there is an entry with regard to unauthorised absence for 32 days, whereas in the above said two letters, it is stated as 20 days, without any particulars. The workman should be put to notice of the salient features of the charges levelled against him, so as to enable him to effectively submit his explanation. If the necessary particulars are not furnished by the management, it will deprive the workman of facing the charges efficiently in the domestic inquiry. Even though it is stated on behalf of the management that the workman has admitted the period of absence, still, it will not pave the way to issue a defective charge sheet.

21. As far as the present case is concerned, there is no communication under description 'Charge sheet'. So, the letter, dated 27.05.1999, may be treated as a Charge Memo, only for the purpose of getting explanation or representation from the workman. When the said letter is silent about the particulars, upon which an inquiry was proceeded against first respondent, the necessary corollary would be, the principles of natural justice have been violated.

22. Much was said about the authority of the management to invoke Regulation 12, for the purpose of retiring a workman, under the circumstances available in this matter.

23. According to the workman, once a review was undertaken before he attained the age of 55 years and, under any circumstances, if he was allowed to continue after completion of 55 years, he is entitled to continue up to the usual age of superannuation from service i.e., 58 years and any second review, after completion of 55 years, is alien to law. This proposition of law is amply fortified by the illuminating legal pronouncements.

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24. A proposition, that with regard to continuation of an employee after 50 years, after review before his completion of 50 years of age, a second review would not be possible, was discussed by a Full Bench of this Court in P.A.Manickam v. Government of Tamil Nadu, 1984 (I) Writ L.R. 1, wherein it has been held as follows :

> "25. .... We are of the view that the ratio of the judgment is that if the case had not been decided against the officer before he attains the age of 50 years, then any consideration subsequent to 50 years of age shall be considered to be a second review and not a first review itself. Therefore, this decision is a clear authority that even in the instant case no review was possible after the appellant attained the age of 50 years.
>
> 26. In this connection, we may also usefully note the rationale or the principle behind this rule that the authorities shall not consider the case of an officer after he attains the age of 50 years. As observed by the Supreme Court in the above decision while purity in administration is certainly to be desired, the security and morale of the service have also to be maintained. The principle behind the instruction that the question of compulsory retirement should be considered before an officer attains the age of 50 years and not afterwards is that the sword of Damocles must not hang over the officer every six months after he attains the age of 50 years....."

25. The respondent in the above said case carried the matter to the Hon'ble Supreme Court in Civil Appeal No.352 of 1985 and other connected matters and the Supreme Court decided the case in Govt.of Tamil Nadu v. P.A.Manickam, AIR 1996 SUPREME COURT 2250, wherein the Apex Court followed a Full Bench decision of the same Court in State of Uttar Pradesh v. Chandra Mohan Nigam, 1978 (1) SCR 521 = AIR 1977 SC 2411. The operative portion of the said decision goes thus :

> "29. The correct position that emerges from Rule 16 (3) read with the procedural instructions is that the Central Government, after consultation with the State Government, may prematurely retire a civil servant with three months' previous notice prior to his attaining 50 years or 55 years, as the case may be. The only

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> exception is of those cases which had to be examined for the first time after amendment of the rule substituting 50 years or 55 where even officers, who had crossed the age of 50 years, even before reaching 55, could be for the first time reviewed. Once a review has taken place and no decision to retire on that review has been ordered by the Central Government, the officer gets a lease in the case of 50 years up to the next barrier at 55 and, if he is again cleared at that point, he is free and untramelled up to 58, which is his usual span of the service career. This is the normal rule subject always to exceptional circumstances such as disclosure of fresh objectionable grounds with regard to integrity or some other reasonably weighty reason."

26. Guided by the dictum laid down in the above said decision of the Hon'ble Supreme Court, it has to be held that once a review has been undertaken before first respondent completed the age of 55 years and compulsory retirement was proposed to him and again he was allowed to continue in service beyond 55 years, the management cannot proceed to retire him after his attaining the age of 55 years, on the ground of unauthorised absence. If the management desires, there is no embargo for it to initiate disciplinary proceedings against him.

27. An analysis has to be made to a circumstance, where the notice, dated 27.05.1999, is found not fulfilling the requirements contemplated under Rule 12 and that the said notice shows that the proposed retirement would take effect from 26.08.1999, at the close of work and even though the period between the date of issuance of the letter and the date of proposed retirement would be three months, first respondent received the said letter on 31.05.1999 and, hence, the notice is short of the required period and, therefore, the notice of retirement, dated 27.05,1999, suffers from infirmity. The said notice violates Regulation 12.

28. Conversely, Mr.N.G.R.Prasad, learned counsel for the appellant management, would strenuously contend that though the caliber of the workman was not up to the mark as found in the letter, dated 11.05.1998, mercy was shown to him and he was offered an opportunity to improve his performance, but he failed to do so and, in the absence of improvement on the part of the workman, it is difficult for the administration of the management, to retain such personnel in service any longer.

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29. In support of his contention, the learned counsel placed reliance upon a decision of the Hon'ble Apex Court in Allahabad Bank Officers' Association v. Allahabad Bank, wherein Their Lordships have held as follows :

> "The power to compulsorily retire a government servant is one of the facets of the doctrine of pleasure incorporated in Article 310 of the Constitution. The object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration. Generally speaking, Service Rules provide for compulsory retirement of a government servant on his completing certain number of years of service or attaining the prescribed age. His service record is reviewed at that stage and a decision is taken whether he should be compulsorily retired or continued further in service. There is no levelling of a charge or imputation requiring an explanation from the government servant. While misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held – and there is no duty to hold an enquiry – is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made. A government servant who is compulsorily retired does not lose any part of the benefit that he has earned during service. Thus, compulsory retirement differs both from dismissal and removal as it involves no penal consequences. Therefore, compulsory retirement is not considered prima facie and per se a punishment and does not attract the provisions of Article 311."

30. Reasserting the opposition, learned counsel for the appellant management would also submit that inefficiency on the part of the workman was considered by the management and it was rightly decided to put an end to his services and, by no stretch of imagination, it could be concluded that the action of the management was perverse. His further thrust is that compulsory retirement of an employee in public service will not be a punishment on him and it

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could not at all be comprehended as a punitive one. He also contends that the past adverse entries may also be taken into consideration by the management, however stale they are, to arrive at a conclusion, whether a particular employee deserves for compulsory retirement, and the manner of projecting adverse old entries would not, in any way, be redundant to the judicially evolved concepts. For this proposition of law, he placed strong reliance upon a decision of the Supreme Court in State of U.P. v. Vijay Kumar Jain, 2002 (3) Supreme Court Cases, 641, the relevant portion of which goes thus:

> "Withholding of integrity of a government employee is a serious matter. In the present case, the integrity of the respondent was withheld by an order dated 13-6-1997 and the said entry in the character roll of the respondent was well within ten years of passing of the order of compulsory retirement. Shifting of the entry awarded by that order to a different period by the Services Tribunal or the entry going beyond ten years of passing of the order of compulsory retirement does not mean that vigour and sting of the adverse entry was lost. Vigour or sting of an adverse entry is not wiped out, merely because it is relatable to 11th or 12th year of passing of the order of compulsory retirement. The said adverse entry in itself was sufficient to compulsorily retire the respondent from service."

31. In the case on hand, the workman has not assailed the order of retirement, on the ground that the adverse entries are not communicated to him. Hence, the appellant cannot take recourse to the above decision.

32. As for the service of the workman, there is no question of doubtful integrity on his part. Even the letter, dated 11.05.1998, does not show anything about it.

33. The only ground upon which the management has taken the decision is the alleged unauthorised absence. Firstly, the particulars of absence do not find place in the letters, dated 27.05.1999 and 22.06.1999. Nextly, a careful scrutiny of the oral testimony of M.W.1 before the Tribunal and our discussion as to entries in the relevant muster rolls would go a long way to show that the attendance registers have not been properly maintained. Added to it, the person, possessing responsibility, was not examined. So, on the strength of entries in the muster rolls, the service of first respondent could not be put to an end, branding as

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compulsory retirement. It is also pleaded that first respondent had to work overtime continuously, extending his work to about 22.00 hours, which was not considered by the management and he, being the Senior Security Assistant, his overtime duty had to be duly counted by the management. But, the management is silent in this regard.

34. Hence, our inferential conclusion would be, the term 'unauthorised absence' which is conceptually inconceivable, was invented subsequently at the time of filing counter before the Tribunal, to project the defence of the management and nothing else.

35. The learned single Judge has thoroughly analysed the relevant materials and records and come to a correct conclusion that the unauthorised absence of the workman was not definite at the time when the competent authority issued a letter of compulsory retirement and, therefore, it has to be held that the said decision was patently arbitrary and the same is liable to be set aside. The learned single Judge also considered the circumstances that since the first respondent had already reached the age of superannuation, namely, 58 years on 31.05.2001, the monetary benefits available to him have to be worked out, as if he got retired on superannuation, at the age of 58 years.

36. In view of our above said discussion, we hold that the decision of the management in retiring the first respondent compulsorily from service could not be countenanced both on facts and in law. Therefore, the order passed by the learned single Judge does not call for any interference and the same deserves to be confirmed.

37. Appeal is dismissed. No costs.

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Sub Asst.Registrar

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To

The Presiding Officer,
Central Government Industrial Tribunal,
Shastri Bhavan,
Chennai.

+ 1 cc to Mr. N. G. R. Prasad, Advocate, SR No.44305

+ 1 cc to Mr. P. Chandrasekar, Advocate, SR No.44162

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